

GAU 3722

#9/dpm
2/23/01
Renewed
Petition

IN THE UNITED STATES PATENT AND TRADEMARK

In Re: U.S. Patent Application of)

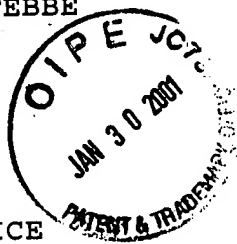
Applicant: JOSEPH J. TEBBE)

Serial No: 09/198,240)

Filed: 11/23/98)

For: CLAMPING JAW DEVICE)

File: 9802T)



Group Art Unit: 3722

Examiner: Bishop, S.

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FEB - 2 2001

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RENEWED PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT
BASED ON THE FAILURE TO RECEIVE AN OFFICE ACTION

Honorable Commissioner of Patents and Trademarks
U.S. Patent and Trademark Office
Washington, D. C. 20231

Sir:

Applicant respectfully petitions that the holding of abandonment on the above-identified application be withdrawn because Applicant through his attorney, never received the Notice of Allowance or Base Issue Fee documents as well as the Notice of Abandonment and had no opportunity to respond.

In support of this Renewed Petition, Applicant's attorney Herman H. Bains, has set forth additional facts and supporting documents for providing adequate grounds for withdrawal of the Holding of Abandonment.

Accordingly, Applicant respectfully requests that the Holding of Abandonment be withdrawn.

Respectfully submitted

JOSEPH J. TEBBE

By Herman H Bains
Herman H. Bains, Reg. No. 19,330
6101 Tracy Avenue
Minneapolis, Minnesota 55436
Telephone: 952-929-9362
Fax: 952-929-9362

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: U.S. Patent Application of)

Applicant: JOSEPH J. TEBBE)

Serial No.: 09/198,240)

Filed: 11/23/98) Group Art Unit 3722

For: CLAMPING JAW DEVICE) Examiner: Bishop, S.

File: 9802T)

DECLARATION OF HERMAN H. BAINS

Honorable Commissioner of Patents and Trademarks
U.S. Patent and Trademark Office
Washington, D. C. 20231

Sir:

On December 01, 2000, Applicant filed a Petition to withdraw the Holding of Abandonment on the above-identified Application. In a Decision dated January 12, 2001, Applicant's Petition was dismissed because Applicant's showing (Bains Declaration) was inadequate to establish that the Notice of Allowance dated February 14, 2000 was not in fact received.

For this record, Declarant states that as a matter of fact, the Notice of Allowance and the Notice of Abandonment were never received. The Decision dismissing Applicant's Petition invited Petitioner to file a renewed Petition to address certain matters raised in the Decision.

Inadequacy in the showing of the previous Petition was based in part on Declarant's failure to include docket sheets showing where the Issue Fee payment date would have been entered, should

Declarant have received the Notice of Allowance. Declarant has enclosed herewith a copy of the Docket sheet (Exhibit 1) for May 2000 which would have included an entry of the due date for payment of the base Issue Fee on the above identified application should Declarant have received the Notice of Allowance.

The docket sheet (Ex. 1) shows these various entries requiring some kind of action by Declarant. Many of these entries are made months, and sometimes years, before the action is required. Two entries adjacent the bottom of the sheet show the date certain Issue Fee payments were due. The Issue Fee payment date for the above-identified application would have been May 14, 2000. Declarant only learned of the Notice of Allowance date (February 14, 2000) from the information contained in the Decision dismissing Applicant's Petition.

Declarant also indicated in his earlier Declaration (12/01/00) that notations of dates that an action to be taken were made on Declarant's desk calendar as a ready reminder of this information. The day calendar notations simply supplements Declarant's Docket Book. Declarant has enclosed herewith a sheet (Ex. 2) showing calendar dates in May 2000 having notations of actions required (fee payments) and completed. Such notations are for May 10, 14, and 15, 2000. There are no entries for May 13 or May 14, 2000 denoting the due date of the Issue Fee on the above-identified application.

In the Decision denying Applicant's Petition, it was correctly noted that Counsel's address changed during prosecution

of this application. Declarant moved in November, 1998 shortly after the above-identified application was filed. The failure to have received the Notice of Allowance, in Declarant's opinion, was due to the change of address and to the expiration of the forwarding order. It is also correct that Declarant inadvertently failed to file a "change of address notice" in this application.

Declarant does not have a present recollection of when the forwarding order expired after Declarant moved to his present location in November 1998. Only a few applications would have been affected by Declarant's change of address. Declarant filed a "change of address" notice with each application as each such application required a response. With the exception of the present application, all such applications affected by Declarant's change of address are believed to have been provided with a change of address notice. Since there were only a few such applications, Declarant does not believe there are any pending applications bearing Declarant's old address which do not contain a "change of address" notice.

Declarant acknowledges that he was remiss in inadvertently failing to file a "change of address" notice in the present application. Declarant further acknowledges that there was no irregularity in mailing the Notice of Allowance to Declarant. However, Declarant is somewhat baffled by the strong presumption that the Notice of Allowance was in fact delivered to Declarant. It is Declarant's understanding that the record (application)

shows that the Notice of Allowance was returned as undeliverable due to the expiration of a forwarding order. The fact that the Notice of Allowance was returned, and is part of the record, is some evidence that Declarant never received the Notice of Allowance. It would seem that if the record reflects that the Notice of Allowance was undeliverable, then the strong presumption of delivery (to Declarant) must fail.

Declarant does not know the Patent Office Policy for dealing with undelivered (or undeliverable) documents which are returned. Perhaps the Application record is examined under these circumstances to only determine the presence or absence of a change of address notice. However, Declarant did file an amendment to an Office Action in the present case. The amendment contains Declarant's present mailing address. Apparently the record is not required to be examined to determine another or later address contained in a recent amendment.

In any event, Declarant believes this Declaration clearly shows that Declarant did not receive the Notice of Allowance. The failure to receive the Notice of Allowance deprived Applicant of an opportunity to respond to the Notice of Allowance.

Accordingly, it is respectfully requested that the Petition for Withdrawal of Abandonment be granted.

Respectfully submitted

By *Herman H. Bains*

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Minneapolis, Minnesota 55436
Telephone: 952-929-9362
Fax: 952-929-9362

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, Technology Center 3700. Attention: E. Rollins-Cross, Patent Examining Group 3710 & 3720. Herman H. Bains

Herman H. Bains Date: January 26, 2001.
Name of person mailing - Herman H. Bains -

DOCKET SHEET

Month

May

Year 2000



Date Due	File No.	Client	Document Due
5/13	L2P1	Robert, Frank 4740,106	1 1/2 Mtc Fee 6-13
5-4	9202L	Laser, 5,207,044 1st	7 1/2 Mtc Fee 11-4
5-27	93081R	Rice Lake Superlight 1,869,189	8 1/2 Mtc Fee 12-29-2000
5-19	9310AB1	Aspen West 5,575,111	3 1/2 Mtc Nov
5-4	9305AF80	AKO-K - (Canadian Appl)	Examination Due
5-27	9312B	Electric Power 5632570	3 1/2 Mtc Fee (F) 11-27
5-13	9501G	Daffney 5629037	3 1/2 Mtc F 11-13-2000
5-21	9401S	Score Mate 1884969	8 1/2 Mtc F 3-21-2001
5-6	9305K1	Kebab 5626063	3 1/2 Mtc F 11-6-2000
5-15	4565Z	Lucombe 4784278	11 1/2 Mtc (F) 5-15-2000
5-7	9405C	Campbell 2125354	Mtc (F) 6-7-2000
5-8	9206B	Broadhurst EPC0601242	Mtc (F) 6-8-2000
5-8	B3P2E	Broadhurst EPC034701	Mtc (F) 6-8-2000
5-23	9305AF6	Lyork 676473	Mtc Rev. 6-23-2000
5-8	9305AF7	Lyork 934028	Mtc Rev @ 6-8-2000
5-4	9305AF8C	Lyork 2097740	Mtc Rev (F) 6-4-2000
5-24	9305HF4	Agro-R 159708/93	Examination (F) 6-24-2000
5-24			Request
5-24	9908B	Boyer 09/378,936	Exam fee (F) 5-24-2000
5-25	9808T1	Trisley 09/184,150	Exam fee F 5-25-2000
		Aspen West 5575111	File closed sold

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Exhibit 2

Sunday
May
2000

14

Moerner's Day (Canada, US)

9:00
9:30
10:00
10:30
11:00
11:30
12:00
12:30
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1:30
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4:30

May 2000

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28	29	30	31			

June 2000

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135

Sunday, May 14

231

May 2000

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May 2000

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28	29	30	31			

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Boyer, Linda Fee
3/2/00

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April 2000

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23	24	25	26	27	28	29
30						

June 2000

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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

131

Wednesday, May 10

235

15

ALACRANCE

May 15 due
Lack 4-28-00
11:25
4-20-00

Handwritten signature

Frank Stehr
Left Perry
End take

April 2000

S	M	T	W	T	F	S

June 2000

S	M	T	W	T	F	S